United Nations S/PV.7710

Security Council

Seventy-first year

Provisional

7710th meeting
Thursday, 9 June 2016, 11 a.m.
New York

President:	Mr. Lamek	(France)
Members:	Angola	Mr. Gimolieca
	China	Mr. Shea Bo
	Egypt	Mr. Aboulatta
	Japan	Mr. Okamura
	Malaysia	Mr. Ibrahim
	New Zealand	Mr. Taula
	Russian Federation	Mr. Zagaynov
	Senegal	Mr. Ciss
	Spain	Mr. Oyarzun Marchesi
	Ukraine	Mr. Vitrenko
	United Kingdom of Great Britain and Northern Ireland	Ms. Sornarajah
	United States of America	Mr. Pressman
	Uruguay	Mr. Bermúdez
	Venezuela (Bolivarian Republic of)	Mr. Méndez Graterol

Agenda

Reports of the Secretary-General on the Sudan and South Sudan

This record contains the text of speeches delivered in English and of the translation of speeches delivered in other languages. The final text will be printed in the *Official Records of the Security Council. Corrections* should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room U-0506 (verbatimrecords@un.org). Corrected records will be reissued electronically on the Official Document System of the United Nations (http://documents.un.org).

16-16501 (E)

Accessible document Please recycle

The meeting was called to order at 11.05 a.m.

Adoption of the agenda

The agenda was adopted.

Reports of the Secretary-General on the Sudan and South Sudan

The President (*spoke in French*): In accordance with rule 37 of the Council's provisional rules of procedure, I invite the representative of the Sudan to participate in this meeting.

In accordance with rule 39 of the Council's provisional rules of procedure, I invite Ms. Fatou Bensouda, Prosecutor of the International Criminal Court, to participate in this meeting.

The Security Council will now begin its consideration the item on its agenda.

I give the floor to Ms. Bensouda.

Ms. Bensouda: I thank you, Sir, for the opportunity to once again engage with the Council on the occasion of my Office's twenty-third report on the Darfur situation.

It has been more than a decade since the Security Council, through resolution 1593 (2005), referred the situation in Darfur to my Office. Resolution 1593 (2005) served as a message of hope for the victims of Darfur subjected to grave crimes under the Rome Statute that they would finally see accountability and justice for their suffering.

Today, those victims' quest for justice is as far from being realized as it was 11 years ago. More worrying still, grave crimes continue to be committed in Darfur, resulting in further victimization and suffering. This reality is to be lamented by all people of good conscience. Over the years since the adoption of resolution 1593 (2005), my Office's message to this body regarding the Sudan's flagrant disregard of the Council's resolutions has been principled, consistent and clear. Sadly, my Office's countless appeals to the Council for action to address the persistent failure of the Sudan to comply with its international obligations have not been heeded. I respectfully note that, regrettably, the Council has been equally consistent in its conspicuous silence over the Sudan's non-compliance with its own resolutions.

This inaction on the part of the Council has had adverse consequences. First, it has emboldened Mr. Al-Bashir to continue travelling across international borders, despite the fact that two arrest warrants have been issued against him by the Court. Secondly, the Council's failure to act in response to 11 findings of non-compliance issued by International Criminal Court (ICC) judges has equally emboldened States, parties as well ascertain non-parties to the Rome Statute, not only to facilitate Mr. Al-Bashir's travels to their territories but to invite and host him. A reasonable observer cannot be faulted for asking how many more such findings must be rendered by the Court to spur this Council into action. The victims' groups with which I will be meeting later today will surely and, indeed, rightly, have such questions on their minds.

This evolving trend risks setting an ominous precedent that, unless it sees redirection, will not bode well for similar genuine efforts aimed at bringing those responsible for mass atrocities to justice. What message are we sending to would-be perpetrators if those against whom international warrants have been issued for the world's most egregious crimes can travel freely, and without any repercussions for those who facilitate or, worse, keep suspects of atrocity crimes as company. Above all, such non-feasance has emboldened some States to publicly express pride in disregarding the Council's authority. This trend of non-compliance with resolutions under Chapter VII of the Charter of the United Nations continues to exacerbate victims' frustrations and should be a matter of great concern to us all. It should therefore be particularly concerning that violations of a Chapter VII resolution have become routine without any resulting condemnation or appropriate action by the Council. With your indulgence, Sir, I would like to place the accent on several important observations in this regard.

First, it is imperative for the Council to fully appreciate and embrace its inter-institutional relationship with the International Criminal Court within the framework of the Rome Statute, and in full respect for the respective independence of these important institutions. More specifically, the Council must recognize that once a ruling of non-compliance has been referred to it pursuant to article 87.7 of the Rome Statute, it is dutybound to act to give due consideration to the judicial ruling and to take decisive action as appropriate. To do otherwise would not only deprive article 87.7 of the Statute of its object and purpose and frustrate the ends of justice, but also erode public confidence in the Council. The Council cannot and must not remain silent and non-responsive on such

judicial findings, which are, after all, inherently linked to the resolution referring the situation of Darfur to my Office.

I invite and encourage Council members to give due consideration to the constructive proposal submitted by New Zealand, calling for a structured approach in dealing with the Court's findings of State non-compliance. A formula that has in the past proved useful for meaningful exchange of ideas is the informal interactive dialogue between my Office and the Council. To be sure, increased interaction between my Office and the Council will enable us to jointly reflect and generate proposals on strengthening our existing inter-institutional relationship in a manner that results in more effective outcomes. This is the least we can do to reassure the victims of Darfur that they have not been forgotten, and that both the Council and my Office are fully engaged in and committed to finding solutions that will ultimately ensure accountability and by extension bring peace and stability to Darfur.

My second broad observation relates to the obligations of states and cooperation. Quoting from the International Court of Justice's advisory opinion on Namibia, the Pre-Trial Chamber of the ICC noted in an instance of non-compliance with Mr Al-Bashir's arrest that

> "[w]hen the Security Council adopts a decision under article 25 in accordance with the Charter, it is for member States to comply with that decision ... To hold otherwise would be to deprive this principal organ of its essential functions and powers under the Charter."

The Pre-Trial Chamber in the same decision further emphasized the critical role of the Council in enforcing compliance with resolutions adopted under Chapter VII of the Charter of the United Nations. To be clear, the Sudan's failure to cooperate with the Court amounts to non-compliance — not least, it is in breach of resolution 1593 (2005). That resolution has in effect brought the Sudan under the full breadth and ambit of the Rome Statute legal framework.

Regarding non-State parties, when they fail to cooperate in the arrest and surrender of suspects against whom warrants of arrest have been issued by the Court in the Darfur situation, they do so with complete disregard for resolution 1593 (2005), which urges them to do the contrary — that is, to fully cooperate with the Court. As it concerns Rome Statute States parties, a failure to arrest and surrender would constitute not only a violation of resolution 1593 (2005), but a breach of their Rome Statute obligations — indeed, their treaty obligations. In either case, these breaches undermine the cause of international criminal justice and are a direct attack on the credibility of the Council, which referred the situation in Darfur to my Office.

Despite these challenges, my Office is continuing its investigations with a view to delivering justice to the victims of grave crimes under the Rome Statute in Darfur. A list of obstacles complicates our work. A lack of access to the territory of the Sudan, resource constraints and non-execution of the long-outstanding arrest warrants have all contributed to the slow progress in investigations.

Nevertheless, my Office's strong belief that justice and accountability are key to lasting peace in Darfur continues to motivate us to exert every effort within the means and abilities at our disposal to advance the investigations as effectively as possible. Leads that have the potential to yield additional evidence continue to be followed even as the modest Darfur team of my Office divides its time and energies between the Darfur dossier and other cases that are equally demanding. Despite these difficulties, we will not falter. Our commitment to the victims of the crimes under the Rome Statute in Darfur and elsewhere is what inspires us and propels my Office forward to overcome challenges and to ultimately obtain the desired results. We are unbending in this commitment.

My Office shares the Council's expression of deep concern in its resolution 2265 (2016) at the increased violence and insecurity in Darfur, the significant increase in the number of persons who have been internally displaced since 2014, and the restriction of humanitarian access to conflict areas where vulnerable civilian populations reside. I am concerned about a significant increase in aerial bombardments and ground attacks, resulting in over 400 civilian deaths and up to 200 villages destroyed as reported. In addition, 107 incidents of sexual crimes against women were reported, resulting in 225 victims. Seventy per cent of these alleged incidents involved gang-rape, and 19 per cent involved girls under the age of 18 years. Troops aligned with the Government of the Sudan and unidentified assailants are the main alleged perpetrators.

Over 129,000 people have been displaced from Jebel Marra since mid-January. There might be

thousands more displaced, hidden in the mountains of Jebel Marra, but as the Council is undoubtedly aware, the United Nations and humanitarian organizations have no access to those areas. There were five reported incidents of attacks on humanitarian aid workers and peacekeepers, with one peacekeeper killed, in this reporting period.

In relation to allegations of ongoing crimes, my Office is concerned over reports of the activities of the Government of the Sudan's Rapid Support Forces (RSF). The RSF were allegedly again involved in the commission of crimes during the reporting period. In one such attack in Central Darfur between 30 December 2015 and 1 January 2016, the Sudanese Armed Forces, RSF and Janjaweed attacked villages in East Jebel Marra. The attack was supported by air raids and artillery fire. Between four and six civilians, including two children, were allegedly killed during the ground attack. In another attack on 21 January, aerial bombardments reportedly killed 48 women and destroyed six houses.

As mentioned in my latest report, my Office notes that the modus operandi of the attacks employed by the Government of the Sudan is similar to the manner in which the attacks were carried out in 2003 and 2004. The continuation of the Government of the Sudan's military attacks in Darfur in that manner must be halted. In our assessment, the arrest and surrender of Mr. Al-Bashir and other accused in the situation in Darfur may assist in stopping those crimes.

In conclusion, the Security Council must no longer tolerate the continuing deteriorating humanitarian situation in Darfur, the continuing non-cooperation of the Government of the Sudan and, in particular, the refusal of the Sudan to arrest and surrender suspects within its territory to the custody of the Court. It is within the powers of the Council to reverse those trends through concrete action and resolve. Meaningful follow-up in response to the Court's findings of non-compliance is one concrete step that the Council can take to project its commitment to the victims of Darfur and to accountability as indispensable and indivisible component of peace and security. Again, I urge the Council to give serious consideration to the proposal made by New Zealand for a structured approach to dealing with the Court's findings of non-compliance referred to the Council.

To be sure, without stronger and committed action by the Council and State parties, the situation in the Sudan is unlikely to improve, the alleged perpetrators of serious crimes against the civilian population will not be brought to justice and the prospects for a lingering conflict will become more acute. Justice and accountability for the grave crimes under the Rome Statute must not be sacrificed at the altar of political expediency. The maintenance of international peace and security and the cause of international criminal justice are intrinsically linked. Indeed, the former is in many ways contingent upon the latter.

The President (*spoke in French*): I thank Prosecutor Bensouda for her briefing.

I shall now give the floor to the members of the Council.

Mr. Zagaynov (Russian Federation) (*spoke in Russian*): In recent weeks, we have repeatedly voiced at the Security Council and at the General Assembly our assessment of the activities of International Criminal Court (ICC). They largely have to do with the Darfur investigation.

We have taken note of the twenty-third report of the Prosecutor of the International Criminal Court on the investigation into the situation in Darfur. We were surprised at the tone used by the Prosecutor in addressing demands to the Security Council for so-called follow-up to the referral of the situation in Darfur. We expect from the ICC Prosecutor detailed reporting on her work, rather than some sort of assessment of the activities of the Security Council, its authority and positions. We consider it inappropriate to attempt to bring influence to bear on the Council. All this ones again makes one wonder about the point of this kind of dialogue between the Security Council and the ICC.

It should be noted that there is no consensus, even among State parties to the Rome Statute, when it comes to implementing certain arrests warrants issued by the ICC. In a number of cases, the African Union and its members have pointed to contradictions between ICC requirements and their own obligations under international law concerning the immunity senior State officials. We understand the position of African countries on the issue of the ICC. We think it is justified. Unfortunately, as has been demonstrated in practice in recent years, not all members of the Council are ready to heed that position. Our delegation was interested in the initiative to establish a special ministerial committee of the African Union to address the concerns of African

countries with regard to the ICC. We also supported the idea of convening a dialogue between the Security Council and representatives of such a committee. We hope there will soon be such a meeting in New York.

We would like to comment on some facts and figures included in the Prosecutor's report. We call attention to unverified information about the number of civilian victims and displaced persons in Darfur. Those findings have not been corroborated by the Office for the Coordination of Humanitarian Affairs (OCHA). The report essentially relays to the Security Council assertions from Radio Dabanga. Based in The Hague, the station is known, among other things, for blatantly spreading misinformation and for its connections with the Sudanese armed opposition. As it is known, there is currently an operation under way in Darfur against the Sudan Liberation Army. That group stubbornly refuses to engage in negotiations with Khartoum. Those insurgents have rejected the moratorium on military operations and have attacked both Government forces and civilian targets and civilians themselves. The militias in Darfur have also adopted a destructive position. In particular, they have refused to sign the African Union road map — a peace plan backed by the Secretary-General and the Chair of the African Union Commission.

Experts of the Security Council sanctions committee on the Sudan have confirmed violations of international humanitarian law by Sudanese rebels, including the recruitment of child soldiers. In the report of the Prosecutor information about that and other wrongdoing by the insurgents undermining peace and security in Darfur is conspicuously absent. Such a one-sided assessment by the ICC against the legitimate Government of the Sudan is unlikely to add credibility to impartiality of the ICC.

Finally, speaking not only about the Darfur investigation but more broadly, we would like once again to emphasize the importance of striking a balance between the interests of serving justice and those of achieving lasting peace and stabilizing the situation. Those tasks are of equal importance and require a comprehensive and balanced approach.

Ms. Sornarajah (United Kingdom): Let me begin by thanking Prosecutor Bensouda for her twenty-third report and for briefing us today on the activities of her Office concerning the situation in Darfur.

Like others here, the United Kingdom is deeply concerned about the increased violence in Darfur this year, in particular in Jebel Marra, as the Prosecutor set out, where as many as 130,000 people have just been displaced. We continue to hear reports of forced displacement, restrictions on humanitarian aid, and attacks on civilians by the Rapid Support Forces and other militias. That cannot continue. It is clear that a lasting peace agreement is long overdue. We urge all parties to engage with the African Union High-level Implementation Panel road map as a viable way forward.

We are especially concerned to hear of widespread allegations of intercommunal clashes and serious sexual violence and gender-based crimes plaguing large parts of Darfur. Our concern is only heightened by the culture of impunity that prevails in the region. All forms of sexual and gender-based violence are utterly unacceptable. Crimes such as those are one of the many reasons that the United Kingdom continues to support the Preventing Sexual Violence in Conflict Initiative. Justice must be delivered to survivors, and the International Criminal Court (ICC) has an important role to play in doing so. We call on all parties to end the violence against civilians and the abuses and violations of human rights and international humanitarian law.

The United Kingdom is frustrated that fugitives from the Court continue to travel with impunity. This reporting period has actually seen an increase in travel. We are particularly disappointed that President Al-Bashir was able to travel to, and be hosted by, State parties. Together with our international partners, we have raised our concerns with the relevant Governments. I hope that other members of the Security Council will do so too. As the Prosecutor is aware, the United Kingdom is a strong supporter of the International Criminal Court. We continue to make clear that we expect compliance with its arrest warrants for all those indicted, including President Al-Bashir, and we remind the relevant countries of their legal obligations as well.

The Government of the Sudan has persistently failed to meet its obligations under resolution 1593 (2005). In doing so, it weakens the rules-based international system. We call upon the Government of the Sudan, as we all countries, to cooperate fully with the ICC so that justice can be delivered, perpetrators can be held to account and impunity can be ended.

In the light of all of these obstructions and difficulties, the Prosecutor should be congratulated

on the progress her Office has made to advance its investigations, including by gathering new documentary evidence and interviewing witnesses. We understand the resource constraints that the Court is under but nevertheless urge her to continue in its essential work.

We call on all ICC States parties to meet their obligations under the Rome Statute, all States to respect resolution 1593 (2005), and the Government of the Sudan to cooperate fully with the ICC. Having referred the situation in Darfur to the Court, the Council must support the Court in fulfilling that mandate and take effective follow-up action in relation to non-cooperation with the Court.

In conclusion, the United Kingdom believes that achieving justice for victims should be at the heart of the international community's response to mass atrocity violence. It is vital that fugitives from international justice not enjoy impunity. Only yesterday, many here noted the fact that the International Tribunal for the Former Yugoslavia had brought accountability to the victims of Radovan Karadžić more than 20 years after the end of that conflict. In doing so, they have shown that justice has no expiration date and that justice can be achieved when an international tribunal is supported in fulfilling its mandate.

Let me close by reiterating the United Kingdom's commitment to the ICC. I call on others to do the same.

Mr. Ciss (Senegal) (*spoke in French*): I should first like to thank you, Mr. President, for having organized this briefing today and to welcome the Prosecutor, Ms. Fatou Bensouda, and thank her for her report and her briefing on the status of the investigations and procedures led by her Office in Darfur pursuant to resolution 1593 (2005).

In a world where the need for justice and reparations for the wrongs endured by millions of victims is imperative, the role and the importance of the International Criminal Court (ICC) have become indisputable. That is why the universal combat against impunity and to uphold the rule of law is vital everywhere, including in Africa, where it was reiterated in the Constitutive Act of the African Union.

Senegal has great faith in these unshakable principles, and that is why we are endeavouring to promote dialogue on matters relating to the relationship between the African Union and the ICC. Indeed, we are firmly of the belief that changing the negative perception of the Court, as well as the effective handling of the concerns of victims of serious crimes, necessarily requires open dialogue and close cooperation as the only way to ensure their synergy in the combat against impunity that Africa has consistently waged.

Indeed, through their mass ratification of the Rome Statute, African countries expressed their commitment to combating impunity across the world, which makes Africa the largest regional group among the Assembly of States Parties, whose presidency my country currently holds.

I turn now to the situation in Darfur. My country remains convinced that there can be no military solution there and that the only way to achieve a comprehensive and lasting peace is through dialogue and reconciliation. While welcoming the efforts of the Sudanese Government in the implementation of the Doha Document for Peace in Darfur, which prioritizes a political settlement of the situation, we would nonetheless appeal to all parties to end the hostilities. Furthermore, it is imperative that the international community take into account the issue of the crimes committed so as to find a solution to the question of impunity, as called for by the African Union in its appeal for the re-establishment of peace and justice in Darfur, which should be heeded. That is why we continue to condemn most firmly all forms of violence against civilians, in particular against women and children, in Darfur. Similarly, the attacks against humanitarian workers and the staff of the African Union-United Nations Hybrid Operation in Darfur are unacceptable, and the perpetrators must be held accountable.

We believe that the time has come to heal the wounds inflicted and to work for reconciliation in order to establish a lasting and definitive peace in Darfur. It is my belief that thanks to the openness and cooperation that parties must demonstrate to resolve common issues in the interests of peace, discussions could lead to a positive contribution to the shoring up of the principles and ideals that unite us all here in this Chamber.

Mr. Méndez Graterol (Bolivarian Republic of Venezuela) (*spoke in Spanish*): The Bolivarian Republic of Venezuela would like to thank the Prosecutor of the International Criminal Court (ICC), Ms. Fatou Bensouda, for introducing the twenty-third report on the investigation into the situation in the Sudan, in accordance with resolution 1593 (2015). At the same time, my country would like, as a State party to the

Rome Statute, to acknowledge the work done by her Office and the International Criminal Court (ICC) in the fight against impunity and the promotion of justice.

Our country firmly supports the efforts of the Prosecutor to ensure justice and accountability in the fight against impunity, as well as the strengthening of the international criminal justice system, so as to make it more transparent and effective. We reiterate the importance of international cooperation in achieving the objectives of the Court, as well as the firm objective of defending the strengthening of the institutions and the effectiveness of the ICC as the only body in the criminal sphere.

In that respect, we encourage all Member States that are not yet parties to the Rome Statute to accede to that instrument in order to achieve its universalization and to contribute to building the rule of law nationally and internationally.

More than 10 years have passed since the adoption of resolution 1593 (2005), through which the Security Council referred the situation in Darfur to the Office of the Prosecutor. Since then, very little progress has been made with respect to its implementation. Although we believe that some gradual progress has been made through the implementation of the provisions of the Doha Document for Peace in Darfur as well as the mediation efforts of former president Thabo Mbeki, the situation in Darfur remains a source of concern.

In this respect, we share the concerns of the Prosecutor concerning the continuation of the violence that is affecting the civilian population. For our country, accountability is an indispensable condition for achieving a lasting peace in the Sudan. Hence, we stress that those who have committed violations of human rights and international humanitarian law in the armed conflict in Darfur must be tried. This would help not only to break the prevailing cycle of impunity but also to prevent the recurrence of these actions, as well as to promote confidence in the institutions of the Sudanese State.

In this respect, we believe that it would be beneficial to promote an effective dialogue between the International Criminal Court and the African Union in order to study practical arrangements that would facilitate the work of the Prosecutor and of the Court, including the possibility of taking certain steps in the region and of achieving agreements based on mutual respect and full respect for international law. We believe that this would complement regional initiatives to fight impunity.

We support the efforts of the Prosecutor to ensure that justice and accountability become a reality and also encourage the Court to assess the situation objectively and impartially. Its role in the impartial investigation of the actions of all parties to the conflict is extremely important so as to strengthen the credibility of this legal body. The Court must work in a balanced manner in order to promote justice and to achieve a firm, lasting and comprehensive peace.

In that context, we are concerned by the attempts made by some to politicize the work of the ICC, which affect the principles on which the Court is based, such as autonomy, independence, impartiality, transparency and objectivity. Undermining these principles would weaken the institutions of the Court, as we would be applying justice in a selective fashion, using a policy of double standards to the detriment of the spirit and purpose of the Rome Statute.

The arrest warrant issued by the International Criminal Court against President Omar Al-Bashir undermines the right to jurisdictional immunity for the sitting Heads of State of those States that are not party to the Rome Statute. The process to suspend the jurisdictional immunity of a sitting President in exercising his office so that he can be naturally tried by justice in his country represents a procedure set out in the Constitution of the Republic of the Sudan. In that regard, Venezuela shares the position of the African Union, the Organization of Islamic Cooperation, the League of Arab States and the Movement of Non-Aligned Countries on the matter. However, we call upon the Government of the Sudan, the competent regional authorities and neighbouring States to cooperate effectively with the International Criminal Court with respect to the arrest of those suspects who do not enjoy jurisdictional immunity and who are currently being investigated by the Office of the Prosecutor for alleged crimes against humanity, war crimes and genocide and whose arrest warrants have been issued by the International Criminal Court in the case of the situation in Darfur.

In conclusion, we encourage the strengthening of cooperation between the International Criminal Court and the Government of the Sudan, as well as by the countries of the region, in order to help to find a solution to the conflict in Darfur whereby the objectives of peace

and justice are achieved for the benefit of the people of that country, in accordance with international law.

Mr. Taula (New Zealand): We thank Prosecutor Bensouda for her briefing and for the twenty-third report on the situation in the Sudan.

At this time last year, New Zealand expressed deep concern and called for accountability for the serious crimes committed (see S/PV.7460). The situation has not notably improved since then. Civilians in Darfur continue to suffer from the consequences of conflict. The past year also saw further attacks on peacekeepers, some fatal, and the human rights and humanitarian situations remained dire.

As noted by the Prosecutor, all five International Criminal Court (ICC) indictees remain at large. Resolution 1593 (2005) placed an obligation on the Government of the Sudan to cooperate fully and to provide any necessary assistance to the Court and the Prosecutor, as well as urged other Member States to cooperate. Those obligations have been widely ignored. Nor has there been any meaningful accountability at the national level. It is not surprising that the victims are losing hope that justice will ever be done.

The Sudan's ongoing non-cooperation with the Court amounts to non-compliance with a Council resolution and its obligations under the Charter of the United Nations. While this mostly relates to the four Government of the Sudan indictees, the Sudan also has not responded to the ICC requests for assistance in the case against Abdallah Banda, a rebel group indictee allegedly responsible for a deadly attack against African Union peacekeepers in South Darfur in 2007. Over the years, the Secretary-General has relayed 11 findings of non-cooperation to the Council with regard to that referral.

During the current reporting period, President Al-Bashir has crossed international borders, and further findings of non-cooperation may follow in the coming months. The Council has yet to respond to those findings in any meaningful way. While not every member of the Council is an ICC State party, we share a common interest in ensuring that the decisions of the Council are complied with. When that does not happen, the credibility and effectiveness of this institution are undermined, and the message is sent that Council decisions can be ignored without consequences. That should be of concern to all those who value the role, reputation and legitimacy of this organ.

In December, my delegation made two proposals that we believe could help end the current malaise in the Council's consideration of the issue. We believe they are no less relevant today.

First, as noted by Ms. Bensouda, the Council needs to be more structured in its consideration of the findings of non-cooperation. There is currently no consistent practice for dealing with them. In most instances, the Council does not even discuss them. In our view, when a finding of non-cooperation is received, the Council should discuss it. As we would with any other issue, we should consider what tools the Council has at its disposal to deal with the issue, whether it be a draft resolution or statement, or something short of that, such as a letter from the Council or a meeting with the country concerned, and then the Council can determine on a case-by-case basis what response is most appropriate.

We accept that the Council may not always agree on how to respond. But if the Council were to ignore every issue where agreement was difficult, we would hardly ever meet. Simply continuing to not respond is neither productive nor credible, which goes to the effectiveness of the Council and its willingness to stand by its own decisions. The *Banda* case seems an obvious place to start in implementing a more structured approach. We will continue to work with other Council members on this in the coming months.

Secondly, we need to give serious thought to how we can achieve a more productive relationship with the Government of the Sudan. There is a clear need for the United Nations and for the Council to consider what can be done to change the nature of the current relationship with Khartoum, proceeding from a firm understanding of the current situation on the ground.

We have been encouraged by the initial progress made under the new leadership of the African Union-United Nations Hybrid Operation in Darfur (UNAMID), in particular with the tripartite meetings among the Government, the African Union and the United Nations. But there is a long way to go. Those positive steps have so far done little to resolve the serious issues UNAMID faces with access and visa issuance. But we believe the Council should look at how it can best support a more constructive engagement with the Government of the Sudan, including by considering options such as a Council visit to the Sudan. We are clear-eyed about the challenges involved in forging a new relationship, and we need to see a

greater willingness by the Government of the Sudan to engage constructively.

We have set up some tangible ways that we believe the Council can show that it is willing to do more than just talk about the protection of civilians. There is no guarantee they will succeed, but given the alternative, which is a continuation of the status quo, we believe it is at least worth trying.

Mr. Gimolieca (Angola): We thank the Prosecutor of the International Criminal Court, Ms. Fatou Bensouda, for her briefing on the current judicial activities of the International Criminal Court (ICC) and on the situation in Darfur, as set out in the twenty-third report submitted to the Security Council pursuant to resolution 1593 (2005).

As a member of the African Union, the Republic of Angola reiterates the African position regarding the activities of the International Criminal Court vis-à-vis sitting African Presidents. It should be recalled that, at the Summit of Heads of State and Government of the African Union held in in January and June 2015, in Addis Ababa and in Johannesburg, respectively, the African Union requested the suspension of the proceedings of the ICC against the President of the Sudan, Mr. Omar Al-Bashir, and urged the Security Council to withdraw its referral of the case.

In a letter dated 8 February 2016 addressed to the President of the Security Council, the Chairperson of the African Union Commission communicated the African Union's resolve to send to New York a ministerial committee of the Ministers for Foreign Affairs on the issue of the ICC to discuss with the Security Council the African Union's concerns in its relationship with the ICC. We look forward to that visit and expect that a more constructive relationship between the African Union and the Security Council with regard to the ICC will emerge from that interaction.

Angola upholds the African Union position on these issues while advocating for dialogue as the sole solution to address and settle the political dispute in Darfur.

Mr. Vitrenko (Ukraine): I would like to thank International Criminal Court (ICC) Prosecutor Bensouda for her useful briefing.

Ukraine remains deeply concerned about the increased violence and insecurity in Darfur, the growing number of internally displaced persons and the restriction of humanitarian access to conflict areas, where a vulnerable civilian population resides.

We strongly condemn the aerial bombardments and ground attacks, which have resulted in hundreds of civilian deaths and destroyed villages, as well as incidents of attacks on humanitarian aid workers and peacekeepers. We are no less concerned about reports of continued violations of international humanitarian law and human rights, in particular sexual violence and gender-based crimes.

Article 27 of the Rome Statute provides that the Statute shall apply equally to all persons without any distinction based on official capacity. In particular, in their official capacity as a Head of State or government, a member of a Government or Parliament, an elected representative or a Government official shall in no case be exempt from criminal responsibility under the Statute. In that regard, we believe that the arrest warrants against suspects in the ICC's investigation into the situation in Darfur should be carried out and that the Sudan must strictly comply with its obligations.

The failure of some State parties to the Rome Statute to carry out their obligations remains another obstacle towards delivering justice. We need to pay particular attention to these facts in the light of the 11 judicial decisions on the issue of non-compliance and requests for appropriate action to be taken regarding State parties, as well as non-State parties, that have failed to execute the ICC arrest warrants.

However, irrespective of being party or non-party to the Rome Statute, States Members of the United Nations should consolidate their efforts in the fight against impunity. By failing to bring those responsible for the gravest crimes to justice, the international community implicitly encourages violence in the rest of the world.

We call on all State parties to the Rome Statute to promote cooperation and carry out the arrests of individuals wanted by the ICC in the Darfur situation.

Finally, we would like to express our support to the Office of the ICC Prosecutor in its work.

Mr. Oyarzun Marchesi (Spain) (*spoke in Spanish*): We are grateful for the presence in the Security Council once again of the Prosecutor of the International Criminal Court. I would like to reiterate the firm commitment of my country to the Court and to international criminal

justice, as well as its acknowledgement of the work of the Prosecutor and the team at her Office.

More than a decade has gone by since the Council referred the situation in Darfur to the Court in the light of the serious allegations about the commission in Darfur of the most serious international crimes. Eleven years later no official has been tried, the conflict continues and civilians continue to suffer the consequences of the conflict; eleven years later there is still no justice in Darfur. The Sudan must cooperate with the Court and must comply with the mandate established in resolution 1593 (2005) in accordance with the obligations that are imposed by the Charter of the United Nations as a member of the Organization.

We are living in a world marked by conflict in which violations of international humanitarian law, as well as human rights abuses, happen without any consequence for those responsible, where accountability is the exception and where impunity for such acts shamefully becomes commonplace. This should not be the case, especially since never before have we had so many means at our disposal in order to prevent it, including the most extensive conventional network and the most developed international justice system in our history.

The reality shows, however, that the means are not enough when there is no political will in order to use them. The International Criminal Court is a perfect example of this. It is the best instrument against impunity that the international community has ever had but, in the case of Darfur, the lack of cooperation on the part of many States, some of them State parties to the Rome Statute, and the lack of support by the Council has not allowed them to carry out its task. As we have said on previous occasions, if only for the sake of consistency, the Council needs to react. We must be concerned by the message that we convey through our persistent inaction in the light of non-compliance for years with a resolution adopted under Chapter VII. On 11 occasions, the Court has brought to the knowledge of this organ different cases of non-compliance in relation to the situation in Darfur, and on 11 occasions the Council has been unable not just to adopt a decision, but even to discuss the situation.

Let me refer to the latest of those notices. It was received in December and it refers to the case of Mr. Abdallah Banda. He is alleged to be responsible for an attack against a contingent of the mission of the African Union that, on 29 September 2007, resulted in the deaths of 12 of its members. In October 2007, the President of the Council condemned the attack, calling for

> "no effort [to] be spared so that the perpetrators [may] be identified and brought to justice. (*S/PRST/2007/35*)

There is not much left to be done except for Mr. Banda to be found and tried as the alleged perpetrator of the attack. The Council, in line with the comments made by the representative of New Zealand, should at least be consistent with regard to its own demands. In the meanwhile, the Blue Helmets serving in the African Union-United Nations Hybrid Operation in Darfur (UNAMID) continue to lose their lives in Darfur.

The conflict in Darfur must end. Spain reiterates its appeal to all parties to join the peace process in a constructive spirit and with the determination of finding a negotiated and inclusive political solution. While we await peace, we would like to remind all parties of their obligation to respect the norms of international humanitarian law and to immediately put an end to attacks against the civilian population.

We remind the Government of the Sudan of its particular obligation to protect its population and, once again, we call for the removal of all obstacles and restrictions that prevent UNAMID from carrying out its mandate, in particular with respect to protecting the civilian population and guaranteeing humanitarian assistance.

I would like to conclude by stating that impunity is still a serious challenge and a threat for the peace process and a threat to civilians, the majority of whom are being denied the right to reparations. Those are words that come from the latest report of the Secretary-General, as well as the Chairperson of the African Union Commission on UNAMID.

We call on the Council and all Member States, whether they are part of the Rome Statute or not, to cooperate to prevent a climate of impunity in Darfur from continuing. We must understand that fighting against impunity is also fighting against unlimited violence and against wars without rules. It is defending the dignity of people, which is mentioned in the Preamble to the Charter of the United Nations. It is preventing conflicts. And, in the end, it is fighting for peace, because peace is not sustainable in the absence of justice. There are not many reasons to be optimistic,

but we cannot abandon the struggle. That is why we encourage Ms. Bensouda and her team to not yield in their efforts. We must trust that some day the situation will change and that some day her work will bear fruit and bring justice to the victims of Darfur.

Mr. Ibrahim (Malaysia): I thank Ms. Bensouda for her briefing. We have taken note of the twenty-third report of the Prosecutor of the International Criminal Court, on the situation in Darfur, submitted pursuant resolution 1593 (2005) and the activities of the Office of the Prosecutor since her last report.

Malaysia remains concerned with the humanitarian and security situation in Darfur. The ongoing conflicts have resulted in civilian deaths, including of women and children, as well as more than 129,000 people displaced from Jebel Marra since mid-January. Given the deplorable situation, all parties to the conflict are reminded of their obligations under international human rights law and international humanitarian law and must refrain from all acts of violence against civilians, including humanitarian and peacekeeping personnel. It is therefore incumbent upon the Government of the Sudan to create an enabling environment where trust and confidence can be built. In this respect, its compliance with relevant Security Council resolutions would be the necessary prerequisite towards that end.

The protracted conflict in Darfur clearly indicates that there is no military solution that will not bring dire consequences or prolong destruction and human suffering. It is for this reason that we welcome the signing of the road map agreement by the Government of the Sudan in March as a commendable step forward. The parties that have not yet signed the agreement should be encouraged to do so urgently and engage constructively in a dialogue.

We also welcome the resumption of the work of the joint working group to deliberate on cooperation with the African Union-United Nations Hybrid Operation in Darfur. In the light of the spirit of constructive engagement by the Government of the Sudan, it is hoped that this will mark a new phase of collaboration with the United Nations, the African Union and other international partners towards peace and security in the country.

Mr. Aboulatta (Egypt) (*spoke in Arabic*): First of all, I would like to thank Ms. Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), for her briefing today to the Security Council on the twenty-third report published pursuant to resolution 1593 (2005). The report of the ICC Prosecutor examined a number of challenges and puts forth comments concerning the Court's performance with respect to the situation in Darfur. I would now like to highlight the following points.

There is a common African position when it comes to the way in which the ICC deals with certain African matters. This position is reflected in, for example, Decisions 547, 586 and 590, of the twenty-fourth, twenty-fifth and twenty-fifth African Union summits, respectively. As provided for in these decisions, Africa is firmly committed to fighting impunity in accordance with the Constitutive Act of the African Union. We therefore call for the suspension of the procedures undertaken by the ICC against President Omar Al-Bashir, the President of the Sudan.

The aforementioned decisions of the African Union summits urge the Security Council to put an end to the referral of the Darfur situation to the ICC. We therefore express our dissatisfaction at the fact that the Security Council has not acceded to the requests of the African Union in this area over the past two years. Furthermore, in the light of the reservations expressed by the countries of the African Union with regard to the Rome Statute, the ICC must refrain from taking measures that would affect the peace, security, stability, dignity, sovereignty and territorial integrity of the countries of the African continent. In addition, the ICC must respect the provisions of international law with respect to the immunities granted to heads of State and sitting officials.

In conclusion, we reject any measure taken against African States on the pretext that these States do not respect or assume their responsibilities under the Rome Statute or that they are not upholding resolution 1593 (2005). We reject any measure against States that have not arrested or delivered President Al-Bashir to the ICC, especially since African countries must respect their obligations stemming from resolutions and decisions of the African Union summit as well as the Constitutive Act of the African Union.

Mr. Shen Bo (China) (*spoke in Chinese*): China has taken note of Prosecutor Bensouda's briefing.

At present, the Darfur region of the Sudan is still facing such problems as the slowness of progress in its political process and armed groups resorting to violent means to disrupt peace and stability in the region. China

appreciates the efforts of the African Union High-Level Implementation Panel (AUHIP) to engage in diplomatic good offices to actively promote the political settlement of the Darfur question. We welcome the fact that the Sudanese Government has signed the road map proposal submitted by the AUHIP. It is hoped that it will lead the opposition and armed groups, proceeding from the broad perspective of maintaining peace and stability in the Sudan, to quickly sign the road map proposal and the Doha Document for Peace in Darfur in a common effort to seek a comprehensive and political settlement of the Darfur question. The international community should adopt an objective and fair position, play a constructive role and create favourable external conditions for the political settlement of the Darfur question.

On the question of the Sudan and the ICC, China's position has not changed. We welcome the fact that the African Union (AU) has established a ministerial committee to deal with the question of the Sudan at the ICC. We support the holding of dialogue between the Council and the AU ministerial committee so as the voices of African countries may be heard and their concerns accommodated. We believe that the legitimate concerns of the AU and its members, including the Sudanese Government, on ICC-related questions, should be fully heeded.

Mr. Pressman (United States of America): I thank Ms. Bensouda for her briefing.

The Security Council referred the situation in Darfur to the International Criminal Court in 2005. Since then, the instability, insecurity, violence and suffering in Darfur have continued unabated. But it is too facile to simply recall the acts of violence that recur year after year. That ignores the way in which these acts compound each other. This year, for instance, we see not only that the conflict between the Government of the Sudan and armed opposition groups has reignited in Jebel Marra, including such incidents as an attack by a group of unidentified armed men that wounded a peacekeeper from the African Union/United Nations Hybrid operation in Darfur (UNAMID), but also the downstream consequences of repeated bombings including against civilian targets.

The United Nations has verified that 68,000 people have been displaced since January of 2016 due to the fighting, raising the total number of internally displaced persons in Darfur to more than 2.7 million, with 5.8 million people in need of humanitarian assistance. Further compounding the problem has been the obstruction of humanitarian assistance, including food and critical medical care. We remain deeply concerned by the Government of the Sudan's de facto expulsion of the head of the Office for the Coordination of Humanitarian Affairs (OCHA) in the face of this critical humanitarian situation.

Likewise, access restrictions and other impediments imposed on UNAMID have hampered the Mission's ability to perform its most basic tasks. For instance, on 15 April, to cite just one example, UNAMID aircraft en route to Misteri, West Darfur, had to modify their usual flight route following a warning from the Government of the Sudan that United Nations flights over the Sudanese-Chadian joint forces camps would be shot down.

The Secretary-General has reported for months that the vacancy rates in UNAMID's human rights and protection-of-civilians sections are 50 and 40 per cent, respectively. These vacancies in the human rights and protection staff of UNAMID are unacceptable and they are due to the systematic denial of visas by the Government of the Sudan.

Restrictions and impediments imposed by Khartoum have also precluded United Nations agencies from ascertaining the scale of civilian casualties and displacement from fighting, and from otherwise comprehensively reporting on the situation on the ground. These provocative acts — acts like kicking out the head of OCHA — have also done little to awaken the Security Council's readiness to respond. That is not how the system was supposed to work. Indeed, the Security Council's inability to agree on even the most basic responses to extraordinary provocations is a collective failure.

As we consider this vicious cycle and our seeming inability to agree on how to stop it, we at least must remain committed to reaffirming our commitment to justice for the victims of genocide and atrocities in Darfur. Failure to provide accountability for the injustices the victims and survivors have incurred emboldens further abuses in the Sudan and outside of the Sudan. It is in that spirit and, I think, appropriate to our discussion today about the importance of justice, that we were surprised and disappointed to read the op-ed that appeared in the New York Times on Tuesday, attributed to South Sudan's President Salva Kiir and Vice-President Riek Machar, which called for halting

the very hybrid court both leaders agreed to support when they signed the peace agreement in August 2015.

This op-ed offered a variety of reasons for opposing the efforts being led by the African Union to bring justice to the victims of South Sudan, perhaps most notably that "building a nation is not an easy task". Indeed it is not, and these two leaders certainly have an immense task in front of them, but part of that difficulty — part of the challenge of rebuilding a nation — lies in pursuing both justice and reconciliation, not one at the expense of the other. The argument in this op-ed that justice will "destabilize efforts to unite our nation by keeping alive anger and hatred" could not be further from the truth.

As we have seen in countless other settings after widespread violence, reconciliation and justice are mutually reinforcing, not mutually exclusive, and that is precisely why both are included in the August 2015 Peace Agreement, and it is precisely why the United States will continue to make every effort to both support the African Union in its establishment of the hybrid court and to promote reconciliation among the people of South Sudan. Neither in South Sudan nor in the Sudan is justice an impediment to unity and sustainable peace. Indeed, in both countries, justice is essential to it.

It is in that spirit that we thank the Prosecutor for her Office's continued investigations into abuses in Darfur and for her long-standing efforts to promote justice for attacks on civilians, including humanitarian workers and peacekeepers by Government and armed opposition groups. We also continue to support UNAMID and its work, which is crucial to efforts to alleviate the suffering of civilians and to ensurin that allegations of atrocities can be investigated, as in the numerous cases of conflict-related sexual violence documented by UNAMID in 2015, and to which the Prosecutor refers in this report.

It is critical that the Security Council, for its part, do more to help ensure compliance with resolution 1593 (2005) and press Sudanese authorities to fulfil the Sudan's obligation to cooperate fully with the Court and with the Prosecutor. While, as the Security Council noted in a letter to the ICC, the decisions of pre-trial chambers on the situation in Darfur have been brought to the attention of members of the Council, this is far from enough. We also continue to call on all Governments not to invite, facilitate or support travel for individuals subject to arrest warrants in the ICC Darfur situation, and for the Sudan to fully cooperate with the ICC, and we continue to believe that the Court's arrest warrants in the Darfur situation should be carried out.

History has shown that the road to accountability can be long and difficult but that justice can ultimately triumph against long odds. The developments in the Extraordinary African Chambers in Senegal, including the recent conviction of former President Hissène Habré, are but one testament to the idea that the tenacity of victims of mass atrocities in seeking justice should not be underestimated, and this example shows what is possible when Governments, regional bodies and victims' groups cooperate to ensure that justice is done.

I would like to emphasize this point because, indeed, it is not just institutions and Governments that have a role to play. Individuals can help too, and they are essential. We are heartened by those in civil society, from South Africa to Uganda, who have continued to show their solidarity with those who have suffered so much, and while it is easy to be daunted by the obstacles to accountability, the International Criminal Court's investigation in Darfur has brought some measure of hope to victims of atrocities there.

There can be both purpose and dignity in coming forward and speaking out about atrocity crimes. We commend the bravery of these victims and look forward to the day when they, like the victims of the Habré regime, see justice delivered in a court of law. The United States will continue to work with this Security Council and other partners in the international community to promote an end to Sudan's many conflicts and a just and sustainable peace.

Mr. Bermúdez (Uruguay) (*spoke in Spanish*): I thank you, Sir, for convening and including this meeting in the June programme of work. I especially welcome the presence of the Prosecutor of the International Criminal Court, Ms. Fatou Bensouda, and the introduction of her detailed twenty-third report on the activities of her Office with respect to the situation in Darfur, in accordance with resolution 1593 (2005).

Uruguay takes this opportunity to reiterate its full support for the role of the International Criminal Court in strengthening the rule of law at the international level by bringing to justice those responsible for the most serious crimes of concern to humanity as a whole, as defined in article 5 of the Rome Statute, wherever they may be. In that regard, we call once again on the States Members of the United Nations that are not yet

parties to the Rome Statute to accede to it and to thereby contribute to the universalization of this instrument, which is vital in combating impunity and defending all the inhabitants of the planet from atrocious crimes that pose a serious threat to the peace and security of all humankind.

Uruguay shares the concerns noted in the Prosecutor's most recent report, which include the deterioration of the security situation in Darfur, an increase in aerial bombardments, ongoing rapes and acts of sexual violence, continued forced displacement as a result of violence, as well as obstacles, threats and attacks on humanitarian workers and the personnel of the African Union-United Nations Hybrid Operation in Darfur. Moreover, in her most recent report, the Prosecutor reminds us, as she has in previous reports, that the arrest warrants issued by the International Criminal Court have yet to be executed. The five persons accused of war crimes and crimes against humanity — one of them accused of genocide — have not yet been subject to the Court's jurisdiction and continue to occupy high-level Government posts in their country. This scenario reflects States' non-cooperation with the International Criminal Court.

As a State party to the Rome Statute, Uruguay is concerned by all cases of non-cooperation. In this particular case, it is worth recalling that resolution 1593 (2005) which in paragraph 2 decides that the Government of the Sudan and all other parties to the conflict in Darfur shall cooperate fully with the Court and the Prosecutor. It also urges all States and concerned regional and other international organizations to cooperate fully. Therefore, faced with obvious non-cooperation on several occasions and for several years now, we believe that the Council should assume a more active role in reviewing cases of non-cooperation with the International Criminal Court and ensure that arrest warrants are executed, a necessary condition to enable the Court to fulfil its mandate.

To conclude, I reiterate Uruguay's commitment to the work of the Prosecutor in her investigations of the crimes committed in Darfur, which will undoubtedly contribute to strengthening the rule of law and the establishment of a society where rights and guarantees are fully respected for all its inhabitants, who have seen their fundamental rights abused for many years now.

Mr. Okamura (Japan): Let me begin by thanking Prosecutor Bensouda for her briefing and for introducing her twenty-third report on Darfur. We are convinced of the importance of the fight against impunity and the rule of law. That is why Japan has consistently supported the activities of the International Criminal Court (ICC). I would like to assure the Prosecutor of Japan's full support for the work of her Office.

In 2005, Japan, as a member of the Council, supported resolution 1593 (2005), which referred the situation in Darfur to the ICC. In light of the serious violations of human rights committed in Darfur, we believed that there was a role for the ICC in bringing the perpetrators to justice. Japan respects the independence and decisions of the ICC concerning arrest warrants emanating from resolution 1593 (2005).

Despite the efforts of the ICC, it is regrettable that justice has not been served on behalf of the victims in Darfur. We note the Trial Chamber's finding in its decision on the *Banda* case that the Sudan had failed to cooperate with the Court. We stress that resolution 1593 (2005) decided that the Government of the Sudan and all other parties to the conflict in Darfur should cooperate fully with the ICC and the Prosecutor. We urge the full implementation of the resolution in order to achieve justice in Darfur. It is appropriate for the Council to follow up on this matter, particularly the decision on the *Banda* case, as communicated to the Council on 11 December 2015.

To make Darfur stable, there is no choice but to move the political process forward. Japan welcomes the signing by the Government of the Sudan, in Addis Ababa on 20 March, of the road map addressing the most important issues: the ceasefire, the delivery of humanitarian aid and a truly inclusive national dialogue. We call upon other parties to sign the road map. In that regard, we appreciate the continued efforts exerted by the State of Qatar, especially the holding late last month of the recent Doha meeting with armed groups and the African Union-United Nations Hybrid Operation in Darfur (UNAMID).

We are concerned about the access restrictions currently in place in Central Darfur, and call upon all parties to grant access to the conflict areas so that humanitarian actors can quickly address the humanitarian situation. We are also concerned about the decreased ability of UNAMID to function, especially in the light of such logistical issues as the problem of containers. In order to resolve these issues, we look forward to further cooperation between the

Government of the Sudan and UNAMID, in accordance with the relevent Council resolutions, for the sake of the Sudanese people in need.

Without the cooperation of States, the ICC cannot execute its mandate. We urge all States, including non-State parties and concerned regional and other international organizations, to cooperate fully with the ICC, in accordance with resolution 1593 (2005), which binds all United Nations Member States.

The President (*spoke in French*): I shall now make a statement in my national capacity.

I thank the Prosecutor of the International Criminal Court (ICC) for her twenty-third report and her briefing to the Council.

As has been noted, it has been 11 years since the Security Council adopted resolution 1593 (2005). That decision had the clear objective to prevent new atrocities by fighting impunity and thereby promoting the reconciliation and stability that are prerequisites of development. The goal of fighting impunity remains not only fully valid today, but fully necessary.

As emphasized by the Prosecutor's report, the situation in Darfur remains marked by ongoing violence. The aerial bombing by the Government of the Sudan has intensified since the beginning of the year, indiscriminately and disproportionately affecting civilian populations. These ongoing attacks on civilians remain intolerable, as are violations of human rights and international humanitarian law. Women remain the targets of completely unacceptable sexual violence. Assaults and harassment against the African Union-United Nations Hybrid Operation in Darfur (UNAMID) and humanitarian actors, as well as the obstacles that are placed on their movements, prevent these organizations to carry out their mission to protect civilians and assist the most vulnerable populations.

In this context, more than ever, justice must be handed down and responsibilities identified so as to prevent and deter such acts. Impunity for past crimes and its implications for possible future crimes are unacceptable. We therefore regret that the arrest warrants issued by the International Criminal Court remain unenforced. This refusal to investigate and prosecute perpetrators can only feed the future cycle of violence in Darfur. And yet, the Council and the international community know the right direction and decisions to take in order to allow Darfur to regain peace and stability.

First, there can be no military solution to this conflict. The settlement of the conflict in Darfur is political by nature, and must involve the Government and rebel groups. We regret in this regard the lack of real progress towards establishing an inclusive process to work for lasting peace. The African Union Peace and Security Council has called for a comprehensive political solution, including in its regional aspects. The path to this goal begins with the cessation of hostilities by all parties. France supports the efforts of the African Union High-Level Implementation Panel to advance in this direction.

Secondly, the protection of civilians must be fully ensured. The continuing violence and insecurity prevent any prospect for long-term stabilization and reconstruction. We regret that UNAMID remains subject to access restrictions and supply and operation blockages. It is essential that the Sudanese authorities fully cooperate to allow UNAMID to fulfil its mandate, in accordance with decisions of the Council and the African Union Peace and Security Council .

Thirdly, unimpeded humanitarian access to civilian populations and the displaced must be facilitated and guaranteed. The needs of over 2.6 million displaced are enormous. Humanitarian actors must be able to respond. The expulsion of the head of the Office for the Coordination of Humanitarian Affairs is of concern in that regard.

Fourthly and lastly, it remains essential that the perpetrators of the crimes be prosecuted and that justice be done. I recall the importance of the obligation of all United Nations Member States to cooperate, in accordance with the resolutions adopted by the Council, without which the prosecution of the most serious crimes by the ICC will remain dead letter. This obligation rests primarily with the Sudan, which must execute the arrest warrants issued against its nationals for offences committed on its territory and cooperate with the Court, as required by resolution 1593 (2005). State parties to the Rome Statute also have a key role to play in terms of their statutory obligation to cooperate with the ICC and execute arrest warrants against persons within their territory. In that regard, we regret the fact that this requirement has not been met by some States in recent months. We are grateful to the Office of the Prosecutor for monitoring this major

issue. In that context, the Council's responsibility is clear and twofold.

On the one hand, the Council must make cooperation with the Court effective and ensure that arrest warrants are carried out. As emphasized by the Prosecutor, it is up to the Council to respond to instances of non-cooperation with the Court. In that regard, we are a ready to consider modalities for action by the Council. It is also essential that the Assembly of State Parties remain engaged on cases of non-cooperation with the ICC, as well as international organizations. In that connection, it is appropriate to continue limiting contacts with persons subject to an arrest warrant of the Court to those deemed essential in line with the Secretary-General's policy. France recalls the importance of the United Nations as a whole continuing to implement those guidelines and apply the relevant provisions of resolution 1593 (2005).

On the other hand, the Council must pursue efforts for an end to violence against civilians, as well as the search for an inclusive political solution. That is the only way to achieve long-term peace and stability in Darfur. To do that end, UNAMID has a significant role to play and should be able to fulfil its mandate. It is essential that free and unrestricted access be guaranteed to the mission throughout the entire territory of Darfur. That will be a point to which we pay particular attention during the next renewal of the mandate of UNAMID.

I now resume my functions as President of the Council.

I give the floor to the representative of the Sudan.

Mr. Mohamed (Sudan) (*spoke in Arabic*): I would like to congratulate you once more, Mr. President, on your assumption of the presidency of the Security Council for this month. I would also like to reiterate my thanks to Egypt, the Council's President last month, as well as to its Permanent Representative, for having efficiently presided over the Council 's work, in May and for ensuring that certain topics of prime importance to Member States in general, and to the Group of African States in particular, continued to be part of the agenda and work of the Council, bearing in mind that issues pertinent to the situation in Africa account for more than 60 per cent of the Council's work, albeit not in a positive sense, in our opinion, as most of them relate to sanctions and coercive measures that are based on the feasibility concept, which guides, for instance, the work of the so-called International Criminal Court (ICC), including its report on my country, which is the subject of this review.

It is important, however, to emphasize at the outset that I am delivering this statement in my capacity as the Permanent Representative of the Republic of the Sudan on behalf of the President of the Republic of the Sudan, in respect of the Court's report, which is being discussed solely in the Security Council. I would like to reiterate that we have no connection whatsoever to the Court, to which the Council makes referrals within its purview, not pursuant to the provisions of a certain Chapter of the Charter of the United Nations, but in accordance with an article in the Rome Statute of the ICC that is not applicable to the United Nations or to any State Member unless such State wilfully elects to be party thereto or subjects itself to the jurisdiction of the Court. This is the principle of pacta sunt servanda, stipulated in article 34 of the Vienna Convention on the Law of Treaties of 1969, which has become part and parcel of established customary international law and of jus cogens, which cannot be set aside.

That leads me directly to resolution 1593 (2005), which the Council adopted under Chapter VII of the Charter and whereby it referred the situation in Darfur to the Court. It should be noted that article 13 (b) of the Rome Statute does not indicate in any way, neither expressly or implicitly, that the Statute is applicable to States that are not party thereto. The Council might also recall that this fact is repeatedly emphasized in every provision throughout the Statute that relates to non-party States, such as the provisions covering issues of cooperation. It should also be noted that the application of article 13 (b) has opened the door wide for political manipulation and for the use of power politics and influence to subjugate some victimized countries and compromise the status of the African continent, since only those considerations are used as decisive factors in making referrals to the Court by the main political organ of the United Nations, namely, the Security Council. That is a fact that I attest to here before the Council in my capacity as the representative of a country with an authentic and long-standing membership in the Organization, and which is substantiated by international law in its letter, interpretation and rationale.

The least one can say about the decision to make this referral, upon which the Court has to date submitted 23 reports to the Security Council, is that it was made on entirely unfounded grounds. In addition, paragraph

6 of the resolution I mentioned, which was the result of bargaining among some permanent members of the Council, rendered the resolution null and void. I should like to refer to some quotations from what was said in the Council about the resolution by the representative of Brazil when it was adopted, on 31 March 2005. Here is what the representataive of Brazil had to say:

> "Brazil also was not in a position to support operative paragraph 6, through which the Council recognizes the existence of exclusive jurisdiction, a legal exception that is inconsistent in international law." (*S/PV.5158, p. 11*)

At the same meeting, the representative of the Philippines stated,

> "[o]perative paragraph 6 of the resolution is killing its credibility" (*ibid, p. 6*).

Nor was the representative of your country, France, Mr. President, happy with adoption of the resolution. He stated that

> "the jurisdictional immunity provided for in the text we have just adopted obviously cannot run counter to other international obligations of States and will be subject, where appropriate, to the interpretation of the courts of my country." (*ibid, p. 8*)

The International Criminal Court seized on that flawed decision of the Council, and the Court's Office of the Prosecutor made it a point to add to its defects, inadequacy and irrelevance by insisting on disregarding article 53 of the Rome Statute, thereby creating a deep rift between the principles of justice and peace, which are intrinsically complementary. We have a shining example in Africa, for instance, when South Africa, a leading nation in the struggle against racism and apartheid, succeeded in blending the two principles and created an exemplary system of both justice and peace, and chose to look beyond the horizon and build a future. The same continent — Africa — is now prey to the ruthless efforts of the Office of the Prosecutor, which wrote its present report while seeking to exercise the power and apply the jurisdiction of the Court selectively over the Continent.

On the other hand, successive resolutions of the Peace and Security Council of the African Union and decisions of African Summits issued since 2008, including the latest two resolutions adopted at those meetings, have invariably condemned the practice of the Court to target African leaders. It is unfortunate that countries of the Northern Hemisphere have practically exempted themselves, thanks to Security Council resolutions and bilateral agreements that grant them immunity, while African countries suffer discriminatory treatment that is worse today than what they suffered during the colonial era and in which they are denied the right to equal sovereignty and their leaders are targeted. Meanwhile, the Court seems to have no competence whatsoever over certain nationalities, no matter how gruesome the crimes committed by the holders of those nationalities are and regardless of the status of the perpetrators, from the top of the hierarchy, both political and military, to the lowest-ranking soldier.

The report also notes that courts in South Africa are fulfilling the country's obligations under the Rome Statute, to which South Africa is a party, and hastens to anxiously take up an issue that is still being appealed by the Court. However, I should like to include here an excerpt from our previous report of December 2015, depicting a moment when the Foreign Minister of South African stood in a meeting of the Assembly of States Parties to the Rome Statute, in November 2015, and said:

(*spoke in English*)

> "I wish to be absolutely clear. The perceptions of inequality and unfairness in the practice of the ICC do not only emanate from the Court's relationship with the Security Council. We ask ourselves, as have many, why no investigations have been open in Afghanistan, Iraq and Palestine after long periods of preliminary analysis notwithstanding clear evidence of violation?"

(*spoke in Arabic*)

African countries have received the President of the Republic of the Sudan in fulfilment of their rights and obligations as independent sovereign States, pursuant to the provisions of international law, as reflected in its well-established norms and customs, as well as in article 98 of the Rome Statute of the ICC itself, but the Court has chosen to misinterpret that article and apply it selectively, as we explained earlier. Likewise, African countries received the President of the Republic of the Sudan pursuant to the provision of article 23.2 of the Constitutive Act of the African Union, which continued to be reiterated at the Union's successive summits, with directives to Union members to abide by, adhere to and act upon.

The African continent, which is now witnessing such discriminatory treatment against its people, knows for sure that it was not a culprit in the horrors of the Second World War, which led to the establishment of the court in 1998, and that the credibility and impartiality of the Court — which have in fact been lacking since its inception — are being jeopardized by those who make its membership a cornerstone of their foreign policy, while providing the best part of its financial resources, monopolizing its offices, selectively nominating candidates for the remainder of its posts on the basis of political affiliation, and mandating that what development assistance and humanitarian aid they give is conditional to acceding to its membership.

How can we end any armed conflict in the world? How has the United Nations ended armed conflicts around the world? Has it not been via negotiated, political and peaceful settlement? That is exactly what the Sudan has done, in cooperation with the United Nations in Abuja in 2006 and when the Abuja agreement was later superceded in Qatar. Holding meetings with those who reject peaceful settlement, the way the Prosecutor has done, undermines international peace and the rights of the victims. Peaceful settlement is the practical and sole interpretation of what the Council has called for in claiming that there is no military solution to the conflict. The Prosecutor and her supporters can ask those who are thwarting the peace process why they are doing so.

When the Council reviewing the Court's report on Libya, the representative of the Russian Federation pointed out that the report in fact appeared to be more of a report from a monitoring mission. That would typically apply, word for word, to the report on the Sudan before us. We would also like to add that the Prosecutor's Office, headed by the Prosecutor of the Court, has resorted to blatant lying when it refers, in paragraphs 14 to 20, of the deteriorating situation in Darfur and the deterioration of the humanitarian situation, in what looks like a pretext to justify the perpetuation of the Court's jurisdiction over the Sudan.

We would like to call attention the report of the African Union-United Nations Hybrid Operation in Darfur (S/2016/268) for the same period covered by the court's report, which was reviewed by the Council on 6 April (see S/PV.7666), and which spoke of a decline in cases of tribal conflict, a decline in criminal acts, an increase in coordination between Sudanese security agencies and the Operation with respect to the prosecution of perpetrators of attacks against the mission's personnel, and a decline in criminal acts against voluntary organizations, and as regards national efforts to protect human rights and establish local branches of the National Commission for Human Rights in all the states of Darfur region.

I would like also to draw attention to the recent joint report of the joint working group of the United Nations, the African Union and the Government of the Sudan, issued on 22 May, which acknowledges the completion of procedures for an administrative referendum in Darfur as a last key step towards implementing the 2011 Doha Peace Agreement for Peace in Darfur; the role of the Implementation Follow-Up Commission in monitoring the implementation of the Doha Document for Peace in Darfur; a higher number of cases of human rights violations reported in Darfur, which reflects the enhanced awareness of citizens regarding their rights and growing confidence in relevant Government agencies; increasing cooperation between the African Union Mission in Sudan and Government authorities in Darfur; the interest of state governors in and their willingness to cooperate with humanitarian organizations and allow them full and unhindered access to the areas they may wish to reach; the efforts aimed at containing any tribal conflicts; and most importantly, the fact that environmental degradation and climate change are among the root causes of the conflict in Darfur. Consequently, do we not have the right to come to the conclusion that the ICC is willing to lie to justify its ongoing exercise of jurisdiction over the Sudan?

Finally, the ICC is seeking to exercise its jurisdiction based on the alleged and unfounded presumption that the judicial system in the Sudan is unwilling and unable to administer justice. In that respect, I would only like to recite, calmly and objectively, the following excerpt from the latest joint report of the United Nations, the African Union and the Government of the Sudan on the situation in Darfur:

(*spoke in English*)

> "The joint working group acknowledges the efforts of the state Governments and Prosecutor for Darfur Special Crimes Court to address the crimes committed during the conflict and restore law and order through the deployment of additional police, corrections and judicial human and material resources across the five states of Darfur, including

legal advisers, prosecutors, legal aid assistants and family child protection units."

(*spoke in Arabic*)

I hope I have thus made my contribution to the Council's work in respect of establishing the fallacious nature of the report of the Office of the Prosecutor of the ICC, in the hope the Security Council will decide to set aside such reports and play close heed to the demands made by the Open-Ended Committee of African Ministers on International Criminal Court, which was set up by the African Summit held in South Africa to end the meddling of the Court in the African continent.

The President (*spoke in French*): I now give the floor to Ms. Bensouda to respond to the comments made.

Ms. Bensouda: I regret all of the allegations of selectivity on the part of the Office that have been made. A close look at our work should suggest otherwise. I regret also the blatant misinformation presented by the representative of the Sudan to cover up the situation in Darfur. I regret this misinformation.

As has been commented on, there is a perceived tension between articles 27, on the irrelevance of official capacity, and 98(1), on cooperation with respect to waiver of immunity and consent to surrender, of the Rome statute. The question naturally arises: if a Head of State for whom an International Criminal Court (ICC) warrant has been issued travels through the territory of a State party, is that State party bound to arrest and surrender the suspects to the Court, given the provisions of article 98(1)?

Reasonable minds, reasonable lawyers may differ in their interpretation of the Statute. However, what is clear and indisputable is which body determines with authority and finality the issue of whether or not immunity is attached to the individual in question in any specific case, and that is the Court and only the Court.

It is an obvious fact, but it must be emphasized, that the ICC is a Court. It is not an association, it is not a non-governmental organization or any other type of organization. It is a criminal Court that determines individual criminal responsibility within the framework of the Rome Statute. States may choose to join the Court by acceding to the treaty or choose not to join the Court.

However, if a State chooses to join the Court and becomes a State party, then it is bound to accept and follow the provisions of the Rome Statute as they apply to States parties; this includes being bound by the decisions of the Court. So who decides the issue of the apparent tension between the apparent tension between articles 27, on the irrelevance of official capacity, and article 98(1), on cooperation with respect to waiver of immunity and consent to surrender? The answer is clear: it is not the States parties themselves; it is not the Security Council; it is not academics; it is the Court itself.

Regarding the specific case of President Al-Bashir, the Pre-Trial Chamber made this fact absolutely clear in its non-compliance decision regarding the Democratic Republic of the Congo, on 9 April 2014. The Court is the only and sole authority to decide whether or not the immunity is generally attached to Mr. Al-Bashir, as sitting Head of State, where applicable in this particular case. The conclusion finds support in article 119(1) of the Statute, which provides that any dispute concerning the judicial functions of the court shall be settled by the decision of the Court. This is a decision of the Court; therefore, simply put, it is binding on States parties that have joined the Court.

Similarly, the Court has ruled on several occasions that in the specific case of Mr. Al-Bashir, States parties are obliged to arrest and surrender him should he travel to their territory. That is why non-compliance findings have been made and referred to the Council in that case. For example, this obligation is clear from the same 2014 decision finding the Democratic Republic of the Congo in noncompliance to which I have referred. It is also crystal-clear from the June 2015 decision in which the Pre-trial Chamber also wrote that there exists no ambiguity or uncertainty with respect to the obligation of the Republic of South Africa to immediately arrest and surrender Mr. Al-Bashir to the Court.

What I want to stress by referring to this decision is that the Court has made plain on several occasions what the answer is to the apparent tensions between article 27 and 98 in the case of Mr. Al-Bashir. If States parties do not agree with these decisions or find them politically inconvenient, they are nevertheless bound to follow the decisions of the Court. If States parties disagree with these decisions, the appropriate response is to challenge them before the Court through the legal process if necessary and seek to appeal decisions if they disagree with them. That is the correct way. That

is the legitimate way to receive legal disputes and to respect the rule of law.

The President (*spoke in French*): I thank Ms. Bensouda for the clarifications made.

The representative of the Sudan has asked for the floor to make a further statement. I now give him the floor.

Mr. Mohamed (Sudan) (*spoke in Arabic*): Mr. President, I wish to thank you for giving me the opportunity to take the floor once again.

In response to the comments made by the Prosecutor, I should like to underscore that I limited myself in my comments on Darfur and on the jurisdiction of the Court, basing myself on accounts that come from the United Nations and from the African Union, which is recognized by the United Nations.

I should like to underscore a fundamental fact concerning justice. The Prosecutor is a part of the Court, but the Prosecutor has become a party to the dispute today. The mission of the Court is to restore justice. However, the Prosecutor of the Court, as well as the other Prosecutors, have chosen to be both judge and jury. This also applies to the previous Prosecutor. We would like to ask the Prosecutor, what crime did the President commit by visiting South Africa?

Concerning the contradiction between articles 27 and 98, I should like to refer the Council to the comments made by the first Prosecutor, Mr. Kirsch, on the issue of constructive ambiguity in the interpretation of the two articles. This contradiction and this constructive ambiguity, as described by the President of the Court, was exploited and continues to be exploited in order to go after Heads of State and to attack States, in particular States that do not have any influence in the world. That is what the Court has based its action on to date.

The meeting rose at 12.55 p.m.